RECENT IMPORTANT DECISIONS

ADVERSE POSSESSION—MISTAKE.—From a decree quieting in plaintiff title by adverse possession, defendants appealed, contending that plaintiff claimed the land only under and by virtue of a will which in fact conferred no legal title, and that such a claim was not adverse. *Held,* assuming that plaintiff believed he was asserting legal rights only, and that his claim of title was defective, his possession would nevertheless ripen into title by adverse possession. *Erickson* v. *Crosby,* (Neb. 1916) 160 N. W. 94.

Slightly different facts raised a somewhat similar question in another jurisdiction. In a suit to quiet title, plaintiff sought to show that he and his predecessor had held the land adversely for the statutory period. It appeared that plaintiff's grantor had occupied the land in question under a mistake as to his true boundary line. *Held,* one who by mistake as to the true line occupies beyond it, claiming a right only to the true line, does not occupy adversely to the actual owner. *Jahnke* v. *Seydel,* (Ia. 1916) 159 N. W. 986.

The courts do not differ as to the elements necessary to render the claim and possession of land adverse to the true owner. Theoretically the occupant must claim the land as his own in either jurisdiction. Where a mistake is shown, the question becomes a hypothetical one. Would the occupant have held the land as his own if he had known that his legal claim to it was without foundation? The Nebraska court presumes the affirmative of this proposition; the Iowa court, the negative. The particular presumption adopted, although rebuttable, invariably controls the decision. The great weight of authority supports the rule applied in Nebraska. The recent case of *Janke* v. *McMahon,* 21 Calif. App. 781, 133 Pac. 21, accords with the Iowa case. For other cases, and an analysis of the question, see 11 MICH. L. REV. 57.

ANNULLMENT OF MARRIAGE—INHERENT POWERS OF EQUITY TO GRANT.—The defendant had been divorced from a former husband on the grounds of adultery, the statute providing that the guilty party should not marry again during the life of the other party without the consent of the court given under certain conditions, and such remarriage should be absolutely void. The defendant married the plaintiff without the consent of the court. Upon discovery of the facts above the husband, the plaintiff, sued for annullment. *Held,* that the marriage should be annulled. *Roth* v. *Roth* (1916), 161 N. Y. Supp. 99.

The case raises the interesting question whether a court of equity has inherent power to annul a marriage which is absolutely void under the statute. The court says that it has, but prefers to base its holding upon the statutory ground of fraud, which existed in this case. *Peugnet* v. *Phelps,* 48 Barb. 566, under facts practically identical with those in the principal case, except that the husband in that case knew of his wife's statutory disability before marriage holds that the court had no inherent power to annull

the marriage even though it were void under the statute and so annullment was refused in that case. In many cases the New York courts have been quite ready to interfere with the marriage relation upon the ground of general equity jurisdiction. It was declared in early cases that the court of chancery might annull marriages on the grounds of insanity and fraud without statutory warrant. *Wightman* v. *Wightman,* 5 Johns. Ch. 343; *Ferlat* v. *Gojon,* 1 Hopk. Ch. 478. In *Burtis* v. *Burtis,* 1 Hopk. Ch. 557, the general jurisdiction of the court of equity to annull marriages was restricted by holding that it extended only to matters affecting contracts in general and did not include the powers of the English Ecclesisatical courts. This has since been the rule in New York. *Davidson* v. *Ream,* 161 N. Y. Supp. 73. In *Griffin* v. *Griffin,* 47 N. Y. 134, the wife was given counsel fees by the court under its inherent power as a court of equity without statutory warrant where her husband had sued to annull the marriage and had failed to establish his case. In *Berry* v. *Berry,* 114 N. Y. Supp. 497, the court held that under its inherent powers as a court of equity it would refuse annullment of a marriage to a guilty party even though the express words of the statute would seem to authorize annullment at the suit of either party. The courts of other states, having general equity jurisdiction have, as a rule, granted annullment upon grounds of insanity, fraud and duress without statutory warrant. *Avakian* v. *Avakian,* 69 N. J. Eq. 89; *Carris* v. *Carris,* 24 N. J. Eq. 516; *Powell* v. *Powell,* 18 Kan. 371; *Clark* v. *Field,* 13 Vt. 460. In *Davis* v. *Whitlock,* 90 S. C. 233, the marriage was void under a statute and the court held that it had inherent power to declare it so, as this would relieve the parties of the uncertainty as to their status, and remove any cloud from title which uncertainty as to marriage status might put there.

BANKRUPTCY—ENFORCEMENT OF LIENS AFTER BANKRUPTCY.—More than four months before bankruptcy the bankrupt gave a security deed to land which, after adjudication, the lien creditor, without the consent of the bankruptcy court, sold at public auction in accordance with the terms of the deed. *Held,* that the sale did not divest the title of the trustee. *Cohen* v. *Nixon & Wright,* 236 Fed. 407.

The filing of the petition is a caveat to all the world, and in effect, an attachment and injunction, *Mueller* v. *Nugent,* 184 U. S. 1, 14, but only as to parties who have no substantial claim of a lien or title to the property claimed as that of the bankrupt. Until the property is in the custody or control, actual or constructive, of the receiver in bankruptcy, or of the trustee, marshal, referee, or (after filing of the bankruptcy petition) of the bankrupt or his agent, it is not *in custodia legis* for the purpose of "assumption of jurisdiction" by the bankruptcy court. See REMINGTON, BANKRUPTCY, §1807, for discussion and citation of cases. *In re Rathman,* 183 Fed. 913, 106 C. C. A. 253; *York Mfg. Co.* v. *Cassell,* 201 U. S. 344, 352, 353, 26 Sup. Ct. 924, 106 C. C. A. 253; *Hiscock* v. *Varick Bank,* 206 U. S. 28, 27 Sup. Ct. 681, 51 L. Ed. 945; *Jacqueth* v. *Rowley,* 188 U. S. 620, 625, 23 Sup. Ct. 369, 47 L. Ed. 620. *Fidelity Trust Co.* v. *Gaskell,* 195 Fed. 865. Hence the statement in *Acme Harvester Co.* v. *Beekman Co., 222* U. S. 301, 32 Sup.